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October 19, 2012

Department of the Army  
U.S. Army Freedom of Information Act and  
Privacy Office  
Casey Building, Suite 144  
ATTN: AAHS-RDF  
7701 Telegraph Road  
Alexandria VA 22315-3905

Procuring Contracting Officer  
Army Contracting Command  
Rock Island Contracting Center  
Building 110/2<sup>nd</sup> Floor NE Wing  
1 Rock Island Arsenal  
Rock Island, IL 61299-6500

Assistant Secretary of the Army  
(Financial Management and Comptroller)  
ATTN: SAFM-SACO  
109 Army Pentagon, Room 3E346  
Washington, DC 20310-0109

Commander  
U.S. Army Contracting Command  
Office of the CIO (ATTN: AMSCC-IM, FOIA  
Officer)  
9301 Chapek Road, Building 2  
Fort Belvoir, Virginia 22060

FOIA Officer  
Office of Management and Budget  
725 17<sup>th</sup> Street N'W, Room 9026  
Washington, DC 20503

OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
1155 Defense Pentagon  
Washington, DC 20301-1155

Indianapolis FOIA/PA Program Manager  
Defense Finance and Accounting Service  
8899 East 56th Street  
Indianapolis, IN 46249-0150

RE: Freedom of Information Act Request

Dear Sir/Madam:

Pursuant to the provisions of the Freedom of Information Act ("FOIA") 5 U.S.C. § 552 *et seq.*, as amended, and Department of Defense, 32 C.F.R. § 286 *et seq.*, and Department of the Army, 32 C.F.R. § 518 *et seq.*, implementing regulations, request is hereby made for copies of the

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documents identified in the numbered paragraphs below. The request is made on behalf of our client Kellogg Brown & Root Services, Inc. (hereinafter “KBR”), separately to each department and organization (“department(s)”) simultaneously because the requestors have no way of knowing, as among the Departments, which is the custodian of the requested documents.

We request that each of the Departments and organizations therein conduct sufficient communications so as to ensure that: (a) the department having the most expeditious access to the documents provides them as soon as possible; (b) all requested documents are provided by one or the other department; and (c) documents held by both departments but where one department has drafts of such documents or where one department’s copies of the subject documents has annotations by hand or otherwise, all such documents are provided.

We further request that, pursuant to 5 U.S.C. § 552(a)(3)(B),<sup>1</sup> your department produce responsive documents in the native electronic format in which the document was created. To the extent that your agency is unable to produce the responsive documents in the requested format, we request that your department confirm that the record does not exist in native format and produce the documents in the following format, list in accordance with our preference: 1) PDF format; or 2) paper copy. While the burden is on the government to produce all documents within the required time period, we are willing to discuss and agree upon the means and sequence of production to facilitate government compliance with the law.

## **I. DEFINITIONS**

The term “document” as used herein shall mean all of the following, without limitation and by way of description: (a) all printed materials of every kind whatsoever; (b) all handwritten materials of every kind whatsoever; (c) all materials in electronic media regardless of the forms of such media; (d) all drafts of subject documents; (e) all documents referenced in subject documents including those noted as exhibits and attachments as well as those referenced in the bodies of subject documents or in footnotes to subject documents; (f) all documents, otherwise identified, but containing marginal or other annotations handwritten or otherwise; (g) all documents in the form of transcripts of meetings and telephone conversations and memoranda of such meetings and telephone conversations whether printed or hand written; (h) to the extent not covered by the definitions in a-g, all materials generated by or received by any government employee, consultant or other person having any relationship to the government; (i) to the extent not covered by the definitions in a-h, all materials generated by any person not in the employ of

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<sup>1</sup> 5 U.S.C. § 552(a)(3)(B) provides that: In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

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the government, including but not limited to lawyers, foreign government officials of every level, other interested parties and non-parties to any communications on any relevant subject.

The phrase "Any documents relating to" means any and all documents discussing, analyzing or containing any information relating to the subject matter identified in the relevant request.

The phrase "LOGCAP III Contract" or "LOGCAP III" means Contract No. DAAA09-02-D-0007, as awarded and as modified, and all task orders, as awarded and as modified, issued under this Contract.

To the extent that you determine that any subject document will not be disclosed because it meets any of the criteria in the FOIA for nondisclosure, you are requested, as noted in more detail below, to identify such documents in accordance with the requirements of *Vaughn v. Rosen*, 523 F.2d 1136 (D.C. Cir. 1975). To the extent that you determine that any subject document will not be disclosed because it is classified in accordance with document classification procedures of your Department, request is hereby made that such document be declassified or redacted sufficiently to enable useful review and inclusion of its identifying characteristics under *Vaughn v. Rosen*.

The term "Force Protection" as used hereinafter shall have both its "term-of-art" meaning and its generic meaning to include, without limitation, both the use of the term in the LOGCAP III Contract (and any applicable regulatory guidance manual or other formal use of that term) but also, intelligence, planning, force structure, communications, routing, air and ground support or other elements forming any part of a Force Protection mission. It shall also include the execution of all protective measures relating to contractor personnel in theater and any and all failures of such protective measures including, but not limited to attacks on such contractors.

## **II. REQUESTED DOCUMENTS**

- (1) All documents relating to the obligation of funds for the LOGCAP III contract, including but not limited documents relating to detailed transaction level data from the Standard Accounting and Reporting System (STARS); United States General Ledger Account balances; and Standard Army Accounting Classifications for the LOGCAP III Contract.
- (2) All documents relating to any de-obligation of funds that at any time were obligated to the LOGCAP III Contract.
- (3) All documents relating to plans for funding for the LOGCAP III Contract, including any documents relating to the LOGCAP III contract being underfunded.

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- (4) All major command and departmental audited financial statements that involved funding or expenditures relating to the LOGCAP III Contract.

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Responsive documents are requested to be produced in their entirety, including all attachments, enclosures, and exhibits, as previously noted. In the event that it is determined that a document contains material or information which falls within statutory exemptions to mandatory disclosure, it is especially requested that such material or information be reviewed for possible discretionary disclosure. Similarly, in the event that it is determined that a document contains material or information which falls within the statutory exemptions to mandatory disclosure, it is expressly requested that, in accordance with the provisions of 5 U.S.C. § 552(b), any and all reasonably segregable portions of such document be produced.

When it is determined by your Department that all documents responsive to any individual request item (or portion thereof) have been furnished or specifically identified and denied under claim of authority pursuant to 5 U.S.C. § 552(b), written confirmation of such fact is specifically requested.

It is further requested that, to the extent possible, documents in logical groupings, determined to be disclosable, be provided in accordance with this request on an incremental basis as soon as they become available.

This request constitutes notice and demand for the production of the above-described documents. If for any reason it is determined that any document or portion thereof will not be made available to the undersigned, or that this request will not, in whole or in part be complied with, prompt notice of any action taken is solicited. In addition, the undersigned requests that notice be given as promptly as possible of any documents which will not be made available, and that they be indexed and identified by stating the title, author, date, nature of such material, and the reason(s) for your Department's determination to withhold disclosure.

This firm and the undersigned will be responsible for the reasonable cost of locating and reproducing the requested documents to the extent required by your regulations. If such cost will exceed five thousand dollars, please contact us before incurring such cost.

Please direct all correspondence related to this request to:

Herbert Fenster  
[hfenster@mckennalong.com](mailto:hfenster@mckennalong.com)  
McKenna Long & Aldridge LLP  
1900 K Street NW  
Washington, DC 20006


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Thank you in advance for your assistance with this matter.

Very truly yours,

McKenna Long & Aldridge LLP

By: 

Herbert L. Fenster, for the firm

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